REMARKS/ARGUMENTS

Claim 1 has been amended to require the presence of at least one specific cationic polymer. Support for this amendment exists throughout the present specification, including original claims 14 and 19.

Claims 1-36 are currently pending, although claims 34-36 have been withdrawn from consideration.

The Office Action rejected the pending claims under 35 U.S.C. § 103 as obvious over U.S. patent 5,556,615 ("Janchitraponvej") in view of U.S. patent 6,214,326 ("Dupuis"), U.S. patent 4,390,552 ("Jacquet") and PCT patent application publication no. WO 01/28506 ("Jahedshoar"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

The claimed invention relates to non-washing compositions containing water, a silicone having quaternary ammonium groups, a cationic surfactant, two cationic polymers and one thickening polymer, wherein at least one of the cationic polymers is a cationic polysaccharide or a quaternary polymer of vinylpyrrolidone and of vinylimidazole. Compositions containing all of the required ingredients have improved suppleness and texture properties over compositions which do not. The applied references neither teach nor suggest such improved compositions.

Initially, Applicants note that the Office did not respond to Applicants' arguments that the applied references do not set forth a *prima facie* case of obviousness. Rather, the Office focused on perceived deficiencies of Applicants' Rule 132 declaration.

Applicants respectfully submit that no *prima facie* case of obviousness has been set forth.

Regarding Janchitraponvej, this reference neither teaches nor suggests the claimed invention for at least the reason that it does not disclose adding any cationic polymers to his compositions, let alone at least two cationic polymers. In fact, Janchitraponvej teaches away from such addition of cationic polymers. Specifically, Janchitraponvej discloses that (a) cationic polymers were known to be conditioning agents (col. 2, lines 35-37); and (b) prior art compositions having cationic compounds could result in hair having reduced elasticity, body and set (col. 2, lines 43-46). Janchitraponvej also states that his invention compositions result in hair having, among other improved properties, improved body. (Col. 16, line 5). Thus, Janchitraponvej discloses conditioning compositions which yield improved results when applied to hair as compared to prior art compositions.

Given that Janchitraponvej neither teaches nor suggests adding cationic polymers to his compositions (even when discussing optional ingredients), given that Janchitraponvej acknowledges that cationic polymers had been used in the past, and given that Janchitraponvej's compositions have improved body properties, one skilled in the art would interpret Janchitraponvej's disclosure as being directed to compositions which exclude cationic polymers but which, instead, focus on the presence of other ingredients to provide the improved properties (for example, body) disclosed therein. Including cationic polymers in Janchitraponvej's compositions would run afoul of at least MPEP §§ 2143.01 V. and VI. which require that, for purposes of making a rejection under 35 U.S.C. § 103, a proposed modification to a prior art reference "cannot render the prior art unsatisfacotry for its intended

purpose" and "cannot change the principle of operation of a reference." Thus, adding a cationic polymer to Janchitraponvej's compositions in contravention of Janchitraponvej's disclosure would constitute an impermissible modification of Janchitraponvej's compositions. In other words, no motivation to add cationic polymers to Janchitraponvej's compositions would have or could have existed.

The secondary references do not compensate for Janchitraponvej's fatal deficiencies. None of the cited references would motivate one skilled in the art to add cationic polymers to Janchitraponvej's compositions, particularly in view of Janchitraponvej's teaching away from the addition of such compositions.

For at least this reason, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103.

Regarding the Rule 132 declaration, the Office indicated its belief that that the results in the declaration merely demonstrated an additive effect, not a synergistic effect. However, this is not the case. The compositions in the declaration all contained 1.07 g of active material. Thus, the results are directly comparable, and demonstrate that the results are more than merely additive or more than what could have been expected based on the activity of the individual compounds. That is, the results demonstrate synergism. Thus, even assuming that a *prima facie* case of obviousness has been set forth (which, as explained above, is not the case), such a hypothetical case of obviousness is easily rebutted by the data in the Rule 132 declaration demonstrating the superior properties associated with the claimed invention. This is true for claim 1 as amended, and particularly true for claim 19.

For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103.

The Office Action also rejected the pending claims as obvious under the judicially created doctrine of double patenting over the claims in U.S. patent application serial no. 10/606,786 in view of Jacquet. Although Applicants disagree with this rejection, solely to expedite prosecution in this case Applicants submit herewith a Terminal Disclaimer over the '786 application. Applicants respectfully submit that this Terminal Disclaimer renders the double patenting rejection moot, and that the rejection should be withdrawn.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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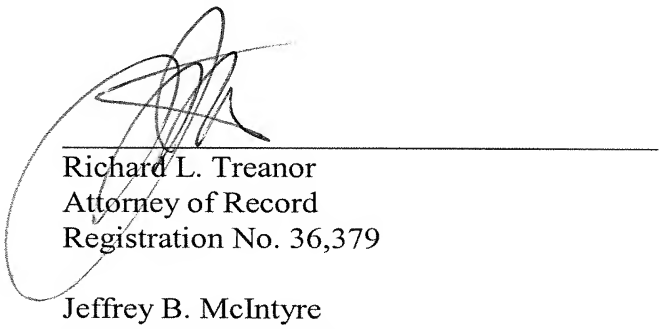

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